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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re DAVID B. et al, Persons Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

YESENIA R.,

Defendant and Appellant.

D055937

(Super. Ct. No. J517548 A, B)

APPEAL from orders of the Superior Court of San Diego County, Martin W. Staven, Judge. (Retired Judge of the Tulare County Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Yesenia R. appeals orders made at the jurisdictional and dispositional hearing regarding her sons, David B. and Fabian R. She contends there was not substantial

evidence to support the jurisdictional findings under Welfare and Institutions Code¹ section 300, subdivision (b). We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

On July 16, 2009, the San Diego County Health and Human Services Agency (the Agency) petitioned on behalf of seven-year-old David and two-year-old Fabian under section 300, subdivision (b) on the basis of domestic violence between their parents, Jaime B. and Yesenia. The petitions also alleged Jaime has a history of violent relationships.

On May 23, 2009, Yesenia had called police claiming Jaime had threatened to kill her. Then, on June 4 Jaime accosted Yesenia as she returned home in the evening with the children in the car. He grabbed her by her neck. She kneed him in his crotch, pushed him away and reached for her cellular telephone. Jaime yelled at her, "Call the . . . cops. I don't care. I'm going to send someone to deal with you," and drove away. Yesenia told police Jaime had threatened her about four times in the past. David said he is angry, fears Jaime and is afraid Jaime will hurt Yesenia. Yesenia said David told her he was so angry he wanted to stab Jaime.

The Agency offered voluntary services, and Yesenia agreed to follow a safety plan and a restraining order against Jaime. However, she changed her mind about the restraining order and on June 30 asked that it be removed. She called Jaime and said she wanted to work things out with him. Yesenia said she and Jaime had had an on-again

¹ Statutory references are to the Welfare and Institutions Code.

off-again relationship for several years. He has other children with another woman and there had been domestic violence in that relationship also.

Jaime told the social worker he became upset with Yesenia when she went to the home of her former boyfriend. He admitted putting his hands around her neck, but said he had not squeezed her. As to the claims of domestic violence in another relationship, he said his former girlfriend had filed a false report about him, obtained a restraining order and had him beaten up. He admitted that when he was a juvenile his mother had obtained a restraining order against him, but he said it had been dismissed. Further investigation revealed a child abuse or neglect referral in December 2008 regarding two of his other children. There were numerous referrals regarding Jaime and Yesenia when they were children.

The court ordered David and Fabian detained with Yesenia on the condition she have no contact with Jaime. It ordered Jaime would have supervised visits and authorized therapy for David. Jaime was served with a restraining order.

The social worker recommended the children be declared dependents of the court and remain in Yesenia's care. She reported Yesenia said she wanted to have a relationship with Jaime in the future, but would remain apart from him so the children would not be removed. The social worker reported Yesenia was pregnant with her and Jaime's third child. Jaime admitted police had documented him as a gang member, but he protested that, although he associated with gang members, he did not participate in gang activities. He had a lengthy history of arrests, including for disorderly conduct,

possession of a switchblade, exhibiting a weapon other than a firearm, and threatening a crime with intent to terrorize.

At the jurisdictional and dispositional hearing on September 17, 2009, the social worker recommended the court declare the children dependents of the court and that they remain with Yesenia. She said Jaime and Yesenia were slow in starting recommended services, they did not believe a restraining order was necessary and they minimized the domestic violence. During Jaime's testimony, he played down the domestic violence incident and denied there had been earlier violence.

After considering the evidence and argument by counsel, the court found the allegations of the petitions true by clear and convincing evidence, declared the children dependents of the court, removed physical custody from Jaime and placed them with Yesenia. It ordered no contact between Jamie and Yesenia and ordered them to comply with their case plans.

DISCUSSION

Yesenia contends there was not substantial evidence to support the court's jurisdictional finding under section 300, subdivision (b). She argues the children did not suffer and there was no substantial risk they would suffer serious physical harm or illness within the meaning of the statute.

A reviewing court must uphold a juvenile court's findings and orders if they are supported by substantial evidence. (*In re Amos L.* (1981) 124 Cal.App.3d 1031, 1036-1037.) "[W]e must indulge in all reasonable inferences to support the findings of the juvenile court [citation], and we must also ' . . . view the record in the light most favorable

to the orders of the juvenile court.' " (*In re Luwanna S.* (1973) 31 Cal.App.3d 112, 114.)

The appellant bears the burden to show the evidence is insufficient to support the court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

Section 300.2 provides as follows:

"Notwithstanding any other provision of law, the purpose of the provisions of this chapter relating to dependent children is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm. . . ." (§ 300.2.)

The focus of the statute is to avert harm to the child. (*In re Jamie M.* (1982) 134 Cal.App.3d 530, 536.) "[D]omestic violence in the same household where children are living *is* neglect; it is a failure to protect [children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it. Such neglect *causes* the risk." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194.)

The petitions alleged as follows:

"COUNT 1: On or about June 4, 2009, the child was exposed to violent confrontations between the parents involving the use of physical force in that the father rushed the mother and grabbed her around the neck as she exited her car with the child inside, and the mother attempted to kick the father in the crotch to get him off of her, and the father has a history of violent relationships, all of which places the child at substantial risk of serious physical harm."

Substantial evidence supports the court's findings under section 300, subdivision (b). Jaime had a history of violence with a former girlfriend, and his mother had obtained a restraining order against him when he was a juvenile. When Yesenia arrived home on June 4, 2009, Jaime accosted her in the parking lot and grabbed her neck as she got out of

her car. She kneed him in his crotch and pushed him away. He threatened her as he drove off. David witnessed the incident. Just 12 days earlier Yesenia had reported to police that Jaime had threatened her. David indicated he was afraid Jaime would hurt Yesenia and was so angry he wanted to stab him. He said if he had three wishes, he would wish that Jaime not come to their home, that he stay out of their lives, and that Jaime was a baby so he could not hurt anyone. David's comments show the domestic violence has placed him and Fabian at risk.

Yesenia had first agreed to voluntary services, but then requested lifting the restraining order against Jaime. Both of them minimized the domestic violence and said the services recommended by the social worker were not necessary. By the time of the hearing, Jaime had not yet begun any of the services offered to him, and Yesenia had not begun domestic violence treatment or therapy and had not arranged for therapy for David. Substantial evidence supports the jurisdictional findings.

DISPOSITION

The orders are affirmed.

HALLER, J.

WE CONCUR:

BENKE, Acting P. J.

NARES, J.